

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

INHANCE TECHNOLOGIES LLC,

Defendant.

CIVIL ACTION NO. 22-5055

Notice of Issuance of Opinion by the United States Court of Appeals for the Fifth Circuit

Pursuant to this Court’s request to be notified of “any significant developments, including any opinions or orders of the Fifth Circuit,” (DI 86 at 2), Plaintiff the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), submits this notice to inform the Court that on March 21, 2024, in case no. 23-60620, *Inhance Technologies LLC v. EPA* (5th Cir. 2023) (C.A.5 DI 186-1), the United States Court of Appeals for the Fifth Circuit issued a published opinion vacating the two orders that EPA issued on December 1, 2023, relating to Inhance Technologies LLC’s Significant New Use Notices. Ex. 1 (Fifth Circuit Opinion). The Fifth Circuit panel held that “the EPA exceeded its statutory authority” in issuing the challenged orders because Inhance’s fluorination process is not a significant new use. Ex. 1 at 7-8. Judge Graves concurred only in the judgment.

The United States will inform the Court of any further orders by the Fifth Circuit, including of the issuance of the Fifth Circuit’s mandate. The United States notes that under Federal Rule of Appellate Procedure 41(b), the Fifth Circuit’s “mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate,

whichever is later. The court may shorten or extend the time by order.” Relatedly, under Federal Rule of Appellate Procedure Rule 40(a)(1), in a civil case where, as here, the United States or an agency of the United States is a party, a petition for panel rehearing may be filed “within 45 days after entry of judgment.” Rule 35(c) states that a petition for rehearing en banc “must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.”

Consistent with the Court’s order issued on March 19, 2024, the United States requests that the Court “set a case management conference to discuss the parties’ intentions and an appropriate schedule.” (DI 86 at 4).

Respectfully submitted,

Dated: March 22, 2024

FOR THE UNITED STATES OF AMERICA

TODD KIM

Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

/s/ Richard Gladstein

RICHARD GLADSTEIN, D.C. Bar #362404
Senior Counsel

JONAH SELIGMAN, La. Bar #38890

Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-1711
Richard.Gladstein@usdoj.gov
Jonah.Seligman@usdoj.gov

JACQUELINE C. ROMERO

United States Attorney
Eastern District of Pennsylvania

GREGORY B. DAVID

Chief, Civil Division

ERIN E. LINDGREN

Assistant United States Attorney

Office of United States Attorney 615 Chestnut Street, #1250

Philadelphia, Pennsylvania 19106

Erin.Lindgren@usdoj.gov

Of Counsel:

N. LINSDAY SIMMONS

ALEXANDER DERGARABEDIAN

Attorney-Advisors

Chemical Risk and Reporting Enforcement Branch

Waste and Chemical Enforcement Division | Office of Civil Enforcement, OECA

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., N.W.

Washington, D.C

(202) 564-3223

Simmons.Lindsay@epa.gov

Dergarabedian.Alexander@epa.gov

CERTIFICATE OF SERVICE

The foregoing notice has been filed electronically using the ECF system and is available for viewing and downloading from the ECF system. Counsel for the Plaintiff also has served by email an electronic copy of this notice on counsel for Defendant and counsel for Intervenor-Plaintiffs Center for Environmental Health, Public Employees for Environmental Responsibility, and Mr. Jay De La Rosa.

DATE: March 22, 2024

/s/ Richard Gladstein

RICHARD GLADSTEIN